

1
2
3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 * * *

7 THE BANK OF NEW YORK MELLON, as
8 Trustee,
9
10 v.
11 HILLCREST AT SUMMIT HILLS
12 HOMEOWNERS ASSOCIATION, *et al.*,
Defendants.

Case No. 2:16-cv-01303-KJD-NJK

ORDER

13 Before the Court are three motions for summary judgment. The first was filed by
14 defendants and counterclaimants, the Edward Kielty Trust, Abigail Sarceno Avila, Maria
15 Aguirre, Ever Atilio Lozano-Membreno, Zoila Angelica Membreno, and Edward and Mary
16 Kielty¹ (ECF No. 96). Plaintiff, the Bank of New York Mellon, responded (ECF No. 106), and
17 the Trust defendants replied (ECF No. 110).

18 Next, the Bank of New York Mellon moved for summary judgment (ECF No. 97). Both
19 the Edward Kielty Trust defendants and co-defendant Hillcrest at Summit Hills Homeowners
20 Association responded (ECF Nos. 103, 104). BNY Mellon replied (ECF No. 114).

21 Finally, Hillcrest at Summit Hills Homeowner Association moved for summary judgment
22 (ECF No. 98). BNY Mellon responded (ECF No. 105), and Hillcrest replied (ECF No. 115).

23 Both BNY Mellon and the Edward Kielty Trust claim an interest in a home located at
24 2216 Calm Sea Avenue in Las Vegas, Nevada. BNY Mellon claims that it holds the superior
25 interest in the property by virtue of a lender's deed of trust. The Trust argues that it purchased
26 the property free and clear of the bank's interest after a lawful nonjudicial foreclosure
27

28 ¹ For ease of reference, the Court will refer to the defendants collectively as "the Edward Kielty Trust" or
"the Trust" unless otherwise necessary.

1 extinguished the lender's deed of trust. Hillcrest, on the other hand, does not claim an interest in
2 the property. Rather, Hillcrest seeks vindication that its foreclosure was lawful and that it did not
3 deceive BNY Mellon during the foreclosure process.

4 BNY Mellon contends that Hillcrest's foreclosure did not extinguish its property interest
5 because the bank's predecessor-in-interest tendered the superpriority lien balance before
6 foreclosure. Hillcrest rejected that payment. Although proper foreclosure of a superpriority lien
7 extinguishes even a lender's first deed of trust, tender of the outstanding superpriority lien before
8 the foreclosure preserves that interest. That is what happened here. BNY Mellon tendered the
9 entire superpriority balance before foreclosure. Hillcrest's agent, Nevada Association Services,
10 rejected that payment and foreclosed anyway. Because BNY Mellon cured Hillcrest's
11 superpriority lien, the association could only foreclose on the subpriority piece of its lien, which
12 it then conveyed to the Edward Kielty Trust. As a result, the Trust took the property subject to
13 BNY Mellon's valid deed of trust. Accordingly, the Court grants BNY Mellon's motion for
14 summary judgment against the Edward Kielty Trust, denies the Trust's countermotion for
15 summary judgment and denies as moot the bank's remaining claims against Hillcrest.

16 **I. Background**

17 The facts in this case follow a familiar pattern of nonjudicial foreclosures. In 2001,
18 nonparty Denise Hookfin purchased the home at 2216 Calm Sea Avenue for \$111,000. See Deed
19 of Sale, ECF No. 96-B. Six years later, Hookfin refinanced the property. The refinance deed of
20 trust listed Hookfin as borrower, Mortgage Solutions Management, Inc. as lender, and Mortgage
21 Electronic Registration Systems, Inc. ("MERS") as beneficiary under the deed of trust. See Deed
22 of Trust 1–2, ECF No. 96-C. MERS later assigned its interest to plaintiff BNY Mellon, who
23 brought this suit. Corp. Assignment of DOT, ECF No. 96-D.

24 From the time of sale to present, the property has been part of the Hillcrest at Summit
25 Hills Homeowner Association and is subject to the association's Covenants, Conditions, and
26 Restrictions ("CC&Rs"). See Hillcrest CC&Rs, ECF No. 96-A. Among those conditions was the
27 owner's responsibility to pay monthly assessments for general upkeep and shared community
28 maintenance. Id. at 15. At some point, Hookfin fell behind on her assessments. That prompted

1 Hillcrest to begin collection actions against Hookfin. In October of 2011, Hillcrest's agent,
2 Taylor Association Management, recorded a Notice of Delinquent Assessment Lien against the
3 property. See Assessment Lien, ECF No. 96-E. The lien identified Hookfin's total outstanding
4 balance as \$890.00. Id. Of the total balance, \$445.00 was "assessments, interest costs and
5 penalties in arrears," and the other \$445.00 constituted "collection and lien costs." Id.

6 When Hookfin did not pay the outstanding balance, Hillcrest began foreclosure
7 proceedings against the property. In April of 2012, Hillcrest's new agent, Nevada Association
8 Services, recorded a Notice of Default and Election to Sell. See Notice of Default, ECF No. 96-
9 F. In the six months between Hillcrest's delinquent assessment lien and its notice of default,
10 Hookfin's outstanding balance ballooned to \$2,478.60. Id. Failure to satisfy that balance, the
11 notice stated, could cause Hookfin to lose her home. Id. In addition to recording the notice,
12 Nevada Association Services sent the notice certified mail to Hookfin, MERS, and BNY Mellon.
13 See Certified Mail Log, ECF No. 98-C. Neither Hookfin, nor any other interested party, paid the
14 \$2,478.60 balance, which caused Hillcrest to record a Notice of Foreclosure Sale. ECF No. 96-G.
15 That notice scheduled the foreclosure sale for February 1, 2013, though the actual sale did not
16 occur until May of 2013. See Foreclosure Deed, ECF No. 96-J. The notice also warned that all
17 rights and interests in the property would be sold to the highest bidder unless Hookfin satisfied
18 the outstanding assessment balance of \$4,595.27. Id. at 3.

19 Around that time, BNY Mellon's predecessor in interest, Bank of America, retained the
20 law firm of Miles, Bauer, Bergstrom & Winters ("Miles Bauer") to ascertain and satisfy the
21 bank's portion of the outstanding lien balance. On February 11, 2013, attorney Rock K. Jung
22 contacted Nevada Association Services by letter and requested an accounting of the outstanding
23 lien balance. The letter acknowledged that the superpriority portion of the association's
24 outstanding lien was "arguably senior" to the bank's interest. Id. at 7. However, the bank argued
25 that the superpriority balance only equaled to nine-months' worth of community assessments.
26 With that understanding, Miles Bauer requested an account ledger detailing nine-months of
27 common assessments on the property and agreed to pay that amount "whatever it [was]." Id.
28 Nevada Association Services did not produce the nine-month ledger, leaving Bank of America to

1 calculate the outstanding superpriority balance on its own. The bank did so by referencing a
2 statement of account from a different property in the Hillcrest Association. Borrowing from that
3 ledger, Bank of America calculated the superpriority lien to be \$630.00 (\$70 per month for nine
4 months). Stmt. of Acct., ECF No. 97-F Ex. 3. It then sent Nevada Association Services a check
5 for that amount. A letter accompanying that check read:

6
7 Despite your current refusal to provide HOA payoff ledgers, [Bank
8 of America] still wishes to make a good-faith attempt to fulfill [its]
9 obligations as the 1st lienholder by tendering to NAS an accurate
10 estimate of the Super-Priority Amount. . . Enclosed you will find a
11 cashier's check made out to NEVADA ASSOCIATION
12 SERVICES in the sum of \$630.00.

13 This is a non-negotiable amount and any endorsement of said
14 cashier's check on your part, whether express or implied, will be
15 strictly construed as an unconditional acceptance . . . and express
16 agreement that [the bank's] Super-Priority obligations towards the
17 HOA . . . have now been "paid in full."

18 Id. at 13. Hillcrest was undeterred by the bank's offer to pay nine-months' worth of assessments.
19 It returned the check and proceeded to foreclosure. On May 3, 2013, Nevada Association
20 Services sold the property a trustee's sale to the Edward Kielty Trust for \$6,000. Foreclosure
21 Deed, ECF No. 96-J.

22 After the trustee's sale, the Trust assigned portions of its interest in the property to
23 various individual defendants in a series of quitclaim transactions. First, the Trust transferred 1%
24 of its interest to Abigail Sarceno Avila and Maria E. Aguirre. See Avila Quitclaim Deed 1, ECF
25 No. 97-J. That same day, Avila and Aguirre returned their 1% interest to the Trust by quitclaim
26 deed. Avila Quitclaim Deed 2, ECF No. 97-K. Later the Trust transferred 1% of its interest in the
27 property to Ever Atilio Lozano-Membreno and Zoila Angelica Membreno. Membreno Quitclaim
28 Deed, ECF No. 97-L.

BNY Mellon brought this suit in June of 2016. The bank included as defendants Nevada
Association Services, Hillcrest Homeowners Association, The Edward Kielty Trust, and the four
individuals to whom the Trust quitclaimed its interest (Avila, Aguirre, Ever Lozano-Membreno,

1 and Zoila Membreno). Compl. 1, ECF No. 1. The complaint listed five causes of action: (1)
2 Quiet Title/Declaratory Relief against each defendant; (2) Breach of NRS § 116.1113 against
3 Hillcrest and Nevada Association Services; (3) Wrongful Foreclosure against Hillcrest and
4 Nevada Association Services; (4) injunctive relief² against the Trust defendants; and (5)
5 Deceptive Trade Practices against Hillcrest and Nevada Association Services. Am. Compl. at 6–
6 13. The Trust defendants answered BNY Mellon’s complaint and asserted their own quiet title
7 claim against the bank. Answer & Counterclaim, ECF No. 24.

8 BNY Mellon later amended its complaint to add Hillcrest at Summit Hills Homeowners
9 Association. Am. Compl., ECF No. 39. The Court dismissed Hillcrest Homeowners Association
10 in favor of Hillcrest at Summit Hills Homeowners Association. See Order, ECF No. 90. In early
11 2018, the Court stayed the case pending the determination of NRS § 166.1113’s notice
12 requirements. See Order Staying Case 2, ECF No. 80. The Court lifted the stay in May of 2019,
13 and the parties renewed their motions for summary judgment shortly thereafter. Since then,
14 Nevada Association Services stipulated to a default judgment, which the Court entered on
15 December 6, 2019. Def. J., ECF No. 109. That leaves BNY Mellon’s claims against the Trust
16 defendants and Hillcrest and the Trust defendant’s counterclaim against BNY Mellon.

17 **II. Legal Standard**

18 The purpose of summary judgment is to avoid unnecessary trials by disposing of
19 factually unsupported claims or defenses. Celotex Corp. v. Catrett, 477 U.S. 317, 323–24 (1986);
20 Nw. Motorcycle Ass’n v. U.S. Dept. of Agric., 18 F.3d 1468, 1471 (9th Cir. 1994). It is available
21 only where the absence of material fact allows the Court to rule as a matter of law. Fed. R. Civ.
22 P. 56(a); Celotex, 477 U.S. at 322. Rule 56 outlines a burden shifting approach to summary
23 judgment. First, the moving party must demonstrate the absence of a genuine issue of material
24 fact. The burden then shifts to the nonmoving party to produce specific evidence of a genuine
25 factual dispute for trial. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587
26 (1986). A genuine issue of fact exists where the evidence could allow “a reasonable jury [to]

27
28 ² Injunctive relief, however, is a remedy and not a stand-alone cause of action. See In re Wal-Mart Wage
and Hour Emp’t Practices Litig., 490 F. Supp. 2d 1091, 1130 (D. Nev. 2007).

1 return a verdict for the nonmoving party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248
2 (1986). The Court views the evidence and draws all available inferences in the light most
3 favorable to the nonmoving party. Kaiser Cement Corp. v. Fischbach & Moore, Inc., 793 F.2d
4 1100, 1103 (9th Cir. 1986). Yet, to survive summary judgment, the nonmoving party must show
5 more than “some metaphysical doubt as to the material facts.” Matsushita, 475 U.S. at 586.

6 Where parties have filed competing motions for summary judgment, the Court must
7 review each motion on its own merits. Fair Housing Council of Riverside Cty., Inc. v. Riverside
8 Two, 249 F.3d 1132, 1136 (9th Cir. 2001). In reviewing each motion, the Court views the
9 evidence and makes all available inference in favor non-moving party. See Kaiser Cement Corp.,
10 793 F.2d at 1103. At bottom, a party does not prevail on summary judgment solely because the
11 other party did not prevail. See Riverside Two, 249 F.3d at 1136.

12 **III. Analysis**

13 Although there are three pending motions, they boil down to two main issues: (1)
14 whether BNY Mellon or the Edward Kielty Trust holds the superior interest in the property and
15 (2) whether Hillcrest wrongfully foreclosed on its delinquent assessment lien. If BNY Mellon
16 insulated its deed of trust from Hillcrest’s foreclosure, its claims against the association are moot
17 because the foreclosure did not cause the bank an injury. The Court evaluates both issues below,
18 starting with parties’ competing quiet title claims.

19 **A. BNY Mellon and the Edward Kielty Trust’s Competing Motions for 20 Summary Judgment**

21 BNY Mellon argues that its predecessor-in-interest protected the bank’s deed of trust by
22 tendering the superpriority portion of Hillcrest’s assessment lien before the association
23 foreclosed on the property. Alternatively, the bank claims that Hillcrest’s foreclosure is invalid
24 because NRS § 116 was unconstitutional or because the trustee’s sale was inequitable. The Trust
25 counters that BNY Mellon’s claims are time-barred under a three-year statute of limitations. If
26 the claims are timely, the Trust argues that Hillcrest’s foreclosure complied with NRS § 116, was
27 constitutional, and that the association rightfully rejected the bank’s conditional tender.

28 As an initial matter, BNY Mellon’s claims are timely. The parties disagree on the
appropriate statute of limitations for this type of so-called quiet title action. The Trust claims that

1 BNY Mellon's claims arise out of various provisions of NRS § 116, which would impose a
2 three-year statute of limitations. See D's Mot. Summ. J. 9, ECF No. 96 (citing NRS § 11.190,
3 which imposes a three-year limitations period on any "action upon a liability create by statute").
4 BNY Mellon, on the other hand, claims that this type of quiet title action is not subject to any
5 statute of limitations "so long as enforcement of the deed of trust is not time-barred." P.'s Resp.
6 5, ECF No. 106.

7 Courts in this district are split between a four-year and five-year statute of limitations for
8 this type of quiet title claim.³ The disagreement boils down to whether these claims are "founded
9 upon the title to real property" under NRS § 11.070 or an attempt to recover property under NRS
10 § 11.080. If so, §§ 11.070 and 11.080 impose a five-year limitations period. If §§ 11.070 &
11 11.080 do not apply, the Court is left with NRS § 11.220's four-year catch-all period for actions
12 not covered by the other limitations provisions. This Court has previously determined that a five-
13 year statute of limitations applies and sees no reason to depart from that holding. See Bank of
14 New York Mellon v. Green Valley S. Owners Ass'n, No. 2:17-cv-2024-KJD-EJY, 2019 WL
15 4393356 at *4 (Sept. 13, 2019).

16 Regardless, BNY Mellon's claim would be timely under any statute of limitations longer
17 than three years. The clock on BNY Mellon's claim began accrual at the time the bank knew or
18 reasonably should have known it suffered an injury. See G & H Assocs. v. Ernest W. Hahn, Inc.,
19 934 P.2d 229, 233 (Nev. 1997). Here, the soonest the bank could have suffered injury was May
20 3, 2013, when Hillcrest attempted to foreclose on its deed of trust. The bank filed its complaint
21 on June 10, 2016, just outside the Trust's suggested three-year period. Compl. at 1. Under either
22 a four-year or five-year limitations period, BNY Mellon's claim is timely. Therefore, the bank's
23

24 ³ Compare Bank of New York Mellon v. Khosh, No. 2:17-cv-0957-MMD-PAL, 2019 WL 2305146 (D.
25 Nev. May 30, 2019) (applying five-year statute of limitations to quiet title claim under NRS § 11.070); Newlands
26 Asset Holding Tr. v. SFR Invs. Pool 1, LLC, No 3:17-cv-0370-LRH-WGC, 2017 WL 5559956 (D. Nev. Nov. 17,
27 2017) (same); Nationstar Mortg., LLC v. Falls at Hidden Canyon Homeowners Ass'n, No. 2:15-cv-1287-RCJ-NJK
28 (D. Nev. June 14, 2017) (same); HSBC Bank USA, N.A. v. Green Valley Pecos Homeowners Ass'n, Inc., No. 2:16-
cv-0242-JCM-GWF, 2017 WL 937723 (D. Nev. Mar. 9, 2017) (same), with U.S. Bank v. SFR Invs. Pool 1, LLC, ---
F.Supp.3d ---, 2019 WL 1383265 (D. Nev. Mar. 27, 2019) (applying four-year catchall provision under NRS
§ 11.220); Nationstar Mortg., LLC v. Safari Homeowners Ass'n, No. 2:16-cv-0542-RFB-CWH, 2019 WL 121960
(D. Nev. Jan. 6, 2019) (same); Bank of America, N.A. v. Country Garden Owners Ass'n, No. 2:17-cv-1850-APG-
CWH, 2018 WL 1336721 (D. Nev. Mar. 14, 2018).

1 claim may proceed as timely.

2 Having found BNY Mellon’s quiet title claim timely, the Court next addresses the
3 question of tender. If BNY Mellon’s predecessor validly tendered the superpriority balance to
4 Hillcrest before foreclosure, the bank’s deed of trust would survive Hillcrest’s trustee’s sale. As a
5 result, Hillcrest’s ability to foreclose would be limited to the subpriority lien, and the Trust
6 would not have acquired BNY Mellon’s interest. For its part, the Trust argues that the bank’s
7 offer of tender did not protect the BNY Mellon’s interest because it was merely a conditional
8 offer to pay the superpriority balance. Alternatively, the Trust argues, the purported tender is
9 invalid because the bank failed to “record, release, or otherwise notice any party” that it
10 attempted to pay the superpriority amount. D.’s Resp. at 9.

11 It is now settled law in Nevada that a homeowner association’s valid foreclosure of a
12 superpriority lien extinguishes all prior encumbrances, including a lender’s deed of trust. SFR
13 Invs. Pool 1, LLC v. U.S. Bank, N.A., 334 P.3d 408, 419 (Nev. 2014). However, the Nevada
14 Supreme Court has confirmed that a lender’s valid tender before foreclosure cures the
15 association’s superpriority lien and voids the foreclosure as to the tendering party’s deed of trust.
16 Bank of America, N.A. v. SFR Invs. Pool 1, LLC, 427 P.3d 113, 121 (Nev. 2018) (“Diamond
17 Spur”). Tender is valid when it is an “in-full” and unconditional payment of the superpriority
18 lien. If the tendering party includes conditions on its tender, it must have the right to request
19 those conditions. Id. at 117–118.⁴

20 Diamond Spur presented facts nearly identical to these. There, Bank of America retained
21 Miles Bauer to calculate nine months of assessments. Miles Bauer tendered a check for that
22 amount to the association’s agent before foreclosure. The letter accompanying the check
23 included conditions, including a “paid-in-full” condition, whereby the association’s acceptance
24 of tender would satisfy all of the bank’s financial obligations to the association. Id. at 118. Like

25
26 ⁴ In a subsequent decision, the Nevada Supreme Court determined that a lender’s deed of trust may survive
27 absent tender if it was clear that tender would have been futile. See Bank of America, N.A. v. Thomas Jessup, LLC
28 Series VII, 435 P.3d 1217, 1220 (Nev. 2019), reh’g en banc granted, Order Granting en Banc Reconsideration, No.
73785 (Sept. 24, 2019). The Nevada Supreme Court has since called for en banc reconsideration of Jessup (id.), and
a decision is pending. In the interim, the Court will not rely on Thomas Jessup. Nor should it. Diamond Spur made
clear that BNY Mellon’s tender of the superpriority portion of the lien was enough to protect its deed of trust against
foreclosure.

1 here, the association rejected the check and elected to foreclose. The association then argued that
2 the bank's tender was invalid because it did not include payment for nuisance and abatement fees
3 and that the tender was impermissibly conditional due to the paid-in-full language in the tender
4 letter. Id. at 117–18.

5 The Nevada Supreme Court disagreed. It found that the bank's tender was both "in-full"
6 and not impermissibly conditional. Payment in full, according to NRS § 116.3115, only includes
7 nine months of unpaid assessments and any nuisance or abatement fees, if those fees exist. Id. at
8 117. Because there was no evidence that Bank of America owed nuisance and abatement fees, its
9 liability to the association was limited to nine months' unpaid assessments. Id. Therefore, nine-
10 months' worth of assessments constituted payment in full. Likewise, the tender was not
11 impermissibly conditional because Bank of America had a right to insist upon the conditions it
12 included in its tender. By tendering payment prior to the foreclosure, the bank voided the
13 association's foreclosure of the superpriority lien. The association, therefore, could not convey
14 the property free from Bank of America's deed of trust, and any subsequent purchaser took its
15 interest subject to the bank's. Id. at 121.

16 The facts here are nearly identical to Diamond Spur. BNY Mellon's predecessor-in-
17 interest retained Miles Bauer who calculated the superpriority lien amount. Miles Bauer sent a
18 check to cure Hillcrest's superpriority lien, yet Hillcrest rejected the payment and foreclosed
19 anyway. There is no evidence that BNY Mellon owed nuisance and abatement fees that would
20 render its nine-month payment insufficient. Put simply, the bank's debt to Hillcrest did not
21 extend past nine months of delinquent assessments. Nevertheless, the Trust argues that the bank
22 should have paid the entire delinquent balance and then sued to recover the overpayment. D.'s
23 Resp. at 9 ("the most prudent solution for [BNY Mellon] would have been to pay the entire
24 figure, save the property from foreclosure . . . and thereafter, dispute the amount paid"). While
25 that may have been good policy—and may have saved thousands of dollars in litigation and
26 fees—the bank was under no obligation to overpay and seek a refund. Its only obligation was to
27 pay the balance of the superpriority lien to preserve its interest.

28 Further, the conditions that Miles Bauer included in its tender did not make its tender

1 impermissibly conditional because the bank was allowed to insist upon those conditions. The
2 only acceptable conditions in a valid tender are “receipt of full payment or a surrender of the
3 obligation.” Id. at 118 citing Heath v. L.E. Schwartz & Sons, Inc., 416 S.E.2d 113, 114–15 (Ga.
4 App. 1992). Here, the only condition Miles Bauer included in its tender was that acceptance
5 would result in the bank’s financial obligations to the association being “paid in full.” Tender
6 Letter 2, ECF No. 46 Ex. 9-4. That condition falls within the “receipt of full payment” condition
7 that the bank was allowed to insist upon. See Diamond Spur, 427 P.3d at 118.

8 Miles Bauer, likewise, was under no obligation to record the bank’s tender or otherwise
9 “keep it good.” The Trust argues that even if the tender was valid when the association rejected
10 it, that tender lapsed when the bank failed to record it or when the bank failed to notify other
11 parties of its intent to cure the lien. D.’s Resp. 9, ECF No. 104. Again, Diamond Spur is
12 instructive. The plain text of NRS 111.315’s recording requirements do not apply to Miles
13 Bauer’s tender because tender of the superpriority portion of an association’s lien does not
14 “create, alienate, assign, or surrender an interest in land.” Diamond Spur, 427 P.3d at 119.
15 Therefore, the bank’s tender remained “good” despite the bank’s failure to record it.

16 At bottom, Diamond Spur’s near identical tender was good enough to preserve the
17 lender’s deed of trust there, and it is good enough to preserve BNY Mellon’s deed of trust here.
18 There is no genuine issue of material fact that BNY Mellon’s predecessor-in-interest tendered
19 Hillcrest’s superpriority lien before the association foreclosed. In so doing, the bank cured
20 Hillcrest’s superpriority lien and voided the foreclosure of its deed of trust, which still
21 encumbers the property. Because the issue of tender is dispositive to BNY Mellon’s motion, the
22 Court need not reach its alternative arguments that NRS § 116.3116 was unconstitutional or that
23 Hillcrest’s trustee’s sale was inequitable. Accordingly, the Court grants summary judgment in
24 favor of BNY Mellon on its quiet title and declaratory relief claim and denies the Edward Kielty
25 Trust’s counter-motion for summary judgment on its quiet title counterclaim.

26 **B. Hillcrest at Summit Hills Homeowners Association’s Motion for**
27 **Summary Judgment**

28 Having granted summary judgment in favor of BNY Mellon, the Court moves on to the
bank’s three additional claims against Hillcrest: Breach of NRS § 116, Wrongful Foreclosure,

1 and Deceptive Trade Practices. It appears that BNY Mellon pleaded these causes of action
2 against the association in the alternative to its quiet title claim. See P.'s Resp. 9, ECF No. 105
3 (the bank's alternative claims are only relevant "[i]f the court concludes, despite the tender, the
4 sale extinguished the deed of trust"). Because BNY Mellon prevailed on its quiet title and
5 declaratory relief claim, its alternative claims are now moot. Further, because BNY Mellon's
6 deed of trust survived Hillcrest's foreclosure, the association did not breach NRS § 116, deceive
7 the bank, or wrongfully foreclose the bank's interest. Accordingly, BNY Mellon has not suffered
8 damages as a result of Hillcrest's foreclosure. Therefore, the Court dismisses as moot BNY
9 Mellon's claims for Breach of NRS § 116, Wrongful Foreclosure, and Deceptive Trade Practices
10 against Hillcrest at Summit Hills Homeowner Association.

11 **IV. Conclusion**

12 Accordingly, IT IS HEREBY ORDERED that plaintiff BNY Mellon's partial Motion for
13 Summary Judgment (ECF No. 97) is **GRANTED**. The Court declares that BNY Mellon's deed
14 of trust in the property located at 2216 Calm Sea Avenue in Las Vegas, Nevada survived
15 Hillcrest at Summit Hills Homeowner Association's nonjudicial foreclosure. Any interest that
16 the Edward Kielty Trust took in this property it took subject to BNY Mellon's valid deed of trust.
17 It follows that any percentage of the interest that the Trust conveyed to the individual defendants
18 in this case, is junior to BNY Mellon's interest in the property.

19 IT IS FURTHER ORDERED that defendants/counterclaimants the Edward Kielty Trust,
20 Abigail Sarceno Avila, Maria Aguirre, Ever Atilio Lozano-Membreno, Zoila Angelica
21 Membreno, and Edward and Mary Kielty's Motion for Summary Judgment (ECF No. 96) is
22 **DENIED**;

23 IT IS FURTHER ORDERED that BNY Mellon's remaining claims against defendant
24 Hillcrest at Summit Hills Homeowner Association are **DENIED AS MOOT**.

25 ///

26 ///

27 ///

28 ///

1 Having resolved each of the claims and counterclaims, the Court directs the Clerk of
2 Court to **ENTER JUDGMENT** in favor of BNY Mellon on its quiet title and declaratory relief
3 claim and close this case.

4 Dated this 13th day of January, 2020.

5
6 

Kent J. Dawson
United States District Judge